# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	<b>√</b> Ford	ee	D	Discourt.	П	U.S.
Monique West		Squad #2	201410644	─  ☑ Abu		_	).L.		Injury
•		1							3 3
Incident Date(s)		Location of Incident:		Precin	nct:	18 M	o. SOL	Е	O SOL
Saturday, 10/04/2014 9:00 PM		Morris Avenue and East 170th Street				4/4/	/2016	4/	4/2016
Date/Time CV Reported CV		CV Reported At:	V Reported At: How CV Reported		Date/Time Received at CCRB				
at, 10/04/2014 9:39 PM		IAB Phone		Fri, 10/17/2014 2:29 PM					
Complainant/Victim	Type	Home Addre	me Address						
Witness(es) Home Address									
Subject Officer(s)	Shield	TaxID	Command						
1. POM Anderson Ortiz	26151	949424	044 PCT						
2. POM Alexis Dejesus	01421	946903	044 PCT						
3. LT Enrique Rodriguez	00000	895928	044 PCT						
Officer(s)	Allegatio	on			Inves	stigato	r Recom	men	dation
A.LT Enrique Rodriguez	Abuse: Lt. Enrique Rodriguez stopped § 87(2)(b) and								
	§ 87(2)(b)								
B.POM Alexis Dejesus	Force: PO Alexis Dejesus pointed his gun at \$87(2)(b)								
C.POM Anderson Ortiz	Force: PO Anderson Ortiz used physical force against [5] [87(2)]								
D.POM Alexis Dejesus	Force: PO Alexis Dejesus struck § 87(2)(b) with a blunt instrument.								

## **Case Summary** On October 4, 2014, at approximately 9 p.m., Lt. Enrique Rodriguez, PO Alexis DeJesus and PO Anderson Ortiz of the 44<sup>th</sup> Precinct stopped \$87(2)(b) and \$87(2)(b) on Morris Avenue and East 170<sup>th</sup> Street in the Bronx (allegation A). During §87(2)(b) s interaction with the officers, PO DeJesus pointed his gun at \$87(2)(5) (allegation B). In the process of arresting them, PO Ortiz allegedly kicked \$87(2)(6) multiple times in his chest and face and PO DeJesus allegedly struck \$87(2)(6) in the head with his handcuffs (allegations C and D) (complaint encl. C33-34, CCRB testimony encl. C38-40, IAB statement encl. C13-14). \$87(2)(b) was arrested for § 87(2)(b) (encl. E43). § 87(2)(a) Fam. Ct. Act § 381.3 IAB investigated the force that caused § 87(2)(b) s injury and found the allegation was unsubstantiated (encl. J5). Mediation, Civil and Criminal Histories On December 5, 2014, § 87(2)(b) filed a notice of claim with the City of New York, claiming injuries to his head and neck, and seeking payment of an unspecified amount (encl. F1-

### **Civilian and Officer CCRB Histories**

3). As a result of the ongoing claim, this case was ineligible for mediation. [837(2)(5)][88 85(1)(3)&(4)][8

- This is the first CCRB complaint filed by \$87(2)(b) and involving \$87(2)(b) (encl. B7, B7a)
- Lt. Rodriguez has been a member of the NYPD for 25 years, has had 35 previous CCRB allegations involving 17 cases with one substantiated allegation in 2007 for making an improper entry into an apartment.
- PO DeJesus has been a member of the NYPD for six years, has had 20 previous CCRB allegations involving 11 cases with one substantiated allegation in 2011 for frisking an individual without justification. §87(2)(9)
- PO Ortiz has been a member of the NYPD for four years and has had three previous CCRB allegations, none substantiated, stemming from two incidents (encl. B4). PO Ortiz currently has an open case, #201503978, alleging excessive force and abuse of authority during an April 2014 arrest. It is alleged that he stopped individuals in the same age group as \$87(2)(6) and punched and kicked them while placing them under arrest.

#### Findings and Recommendations

#### Allegations Not Pleaded

• § 87(2)(g)

#### **Explanation of Subject Officer Identification**

Lt. Rodriguez was the supervisor on scene and admitted directing his officers to conduct the stop.

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### Recommendations

Allegation A- Abuse of Authority: Lt. Enrique Rodriguez stopped §87(2)(b) and §87(2)(b)
It is undisputed that Lt. Rodriguez stopped \$87(2)(b) and \$87(2)(b)
and § 87(2)(b) both stated that they had been walking with friends, § 87(2)(b) and
when they were stopped Neither \$87(2)(b) nor \$87(2)(b) could be reached to
obtain statements (see IAs encl. H1-10).
Lt. Rodriguez stated that he saw legs of individuals behind a truck but could not see what
they were doing at the time he decided to stop them. Lt. Rodriguez admitted that his decision to
stop the group that included \$87(2)(b) and \$87(2)(b) was based on his belief that they were
breaking into the truck. He stated that this belief was based only on the history of vehicle break-
ins in the area and the proximity of the group to the trailer. There had been no reports of vehicle
break-ins that day. He made these observations from a moving vehicle, approximately 30 feet
away, in a dimly lit area. Lt. Rodriguez's intent upon getting out of his car was to stop and
question them regarding their actions. He stated that upon approaching them, he yelled, "Police,
don't move." He later added that when he exited his vehicle, he smelled marijuana (encl. D5-6).
An officer may stop a person only if he reasonably suspects that the person is
committing, has committed, or is about to commit a crime. People v. DeBour, 40 N.Y.2d
210 (1976) (Encl.A1-11). Innocuous behavior, albeit in a high crime area, does not generate a
founded or reasonable suspicion that criminality is afoot. People v. Hampton, 200 A.D.2d 466
(1994) (encl. A12-14).
§ 87(2)(g)
Allegation B- Force: PO Alexis DeJesus pointed his gun at 887(2)(b)
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towards PO DeJesus and PO DeJesus pointed his gun at \$87(2)(6) It is undisputed that after PO DeJesus pointed his gun at \$87(2)(6) It is undisputed that \$100 towards PO DeJesus and PO DeJesus pointed his gun at \$100 towards PO DeJesus and PO DeJesus pointed his gun at \$100 towards PO DeJesus and PO DeJesus pointed his gun at \$100 towards PO DeJesus and PO DeJesus pointed his gun at \$100 towards PO DeJesus and PO DeJesus pointed his gun at \$100 towards
s 87(2)(b) had a gravity knife on his person at this time.
so (5) had a gravity kine on his person at this time.  § 87(2)(b) corroborated the officers' statements that § 87(2)(b) had his hands in the
pocket of his sweater at the time they were stopped. \$\\\^{\sigma}(2)(b)\$ stated that \$\\\^{\sigma}(2)(b)\$ was
trying to keep his phone from falling out (encl. C38-39).
that caused PO DeJesus to suddenly lose sight of them. Neither \$87(2)(b) nor PO Ortiz mentioned this. PO DeJesus also stated that \$87(2)(b) and \$87(2)(b) continued to run
towards him after he drew his weapon and that their hands were out of view at the time he
pointed his gun at them, causing him to fear for his safety. \$87(2)(b) and PO Ortiz agreed that
stopped running at this time (encl. D11-12).

An officer has broad discretion to display his firearm whenever he reasonably believes, based upon a totality of circumstances, that his life or the life of another is endangered. Police Department v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000)(encl. A29).

At the time PO DeJesus pointed his weapon at \$87(2)(b) had been running towards him with an unidentified object in his pocket. It was dark outside and the area was dimly lit.

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Allegation C- Force: PO Anderson Ortiz used physical force against §87(2)(b)
PO Ortiz acknowledged that, when \$87(2)(b) made repeated attempts to get up from
the ground where he was facedown, PO Ortiz pushed his foot down on \$87(2)(b) s lower back
each time. He stated that other than lifting his body to get up, §87(2)(b) had not been doing
anything else with his body or resisting in any other way. It is undisputed that at this time, PO
DeJesus was dealing with \$87(2)(b) and PO Ortiz was dealing with \$87(2)(b) on a one to one
basis (CCRB statement encl. D17-18).
alleged that while he was on the ground being apprehended by PO DeJesus, he
saw PO Ortiz kick ser(2)(b) six or seven times in his chest and face (CCRB statement encl.
C38-39). stated in his IAB statement that as he got down to the ground, as he was
commanded to do, he was kicked once in his head prior to being handcuffed and then once in the
rib area after he was in handcuffs. He did not see who kicked him because he was facedown. He
claimed to have sustained scrapes to his face and a chipped tooth from having his face pushed
into the ground while he was being handcuffed though he did not cooperate with the investigation
so no medical records were obtained. He denied resisting arrest or sustaining any injuries from
the kicks (encl. C21-22). In his phone statement to the CCRB, \$87(2)(b) stated that an officer
matching the description of PO Ortiz kicked him a couple of times. He was then kicked on both
sides of his ribs but did not see who did this. PO Ortiz then kicked or pushed his head down onto
the ground. His top left front tooth was chipped as a result. He also sustained a bruise on the right
side of his forehead and on his nose but was not sure which force caused him to sustain those
injuries (encl. C35).
Patrol Guide Procedure 212-08 states that only the amount of force necessary should be
used to effect an arrest (encl. A35-36).
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Allegation D-Force: PO Alexis DeJesus struck §87(2)(b) with a blunt instrument.
It is undisputed that §87(2)(6) was down on the ground when PO DeJesus struck him in
the forehead with his handcuffs.
stated that when he got to the ground, PO DeJesus grabbed both of his hands
and placed them behind his back. §87(2)(b) did not resist. PO DeJesus held his hands behind his
back with his knee. § 87(2)(b) turned his head to the left to see what was happening to
when PO DeJesus hit him in the face with his handcuffs (CCRB statement encl. C38-
39). In his statement to IAB, \$87(2)(5) stated that PO DeJesus saw PO Ortiz getting violent with
so PO DeJesus got violent with him and hit him once in the face with his handcuffs
(encl. C2).
According to medical records, sar(2)(b) sustained two parallel 1cm lacerations to the
left side of his forehead from handcuffs while being arrested (arrest photo encl. E41). The
lacerations were sutured. Medical records did not indicate the number of stitches he received. According to Lt. Rodriguez's memo book entries, \$87(2)(6) received 10 stitches.
In his statement to IAB, §87(2)(b) described §87(2)(b) are statement as a "fight" but he
could not elaborate. He did not know how \$87(2)(b) s injury was sustained (encl. C21-22). In
his CCRB phone statement, \$87(2)(b) stated that he could not see what happened to
\$87(2)(b) because of his position on the ground (encl. C35).
PO DeJesus explained that he held 887(2)(b) down on the ground while PO Ortiz dealt
with \$87(2)(b) had been lying on his side, tilted, face down. \$87(2)(b) was
moving his body. PO DeJesus commanded him to stay still and give him his hands. PO DeJesus
stood over \$87(2)(b) crouched down. He could not estimate how far above \$87(2)(b) he stood
his knees had not been on the ground. PO DeJesus had not attempted to handcuff \$87(2)(b) yet
because he wanted to make sure that PO Ortiz was okay. His plan was to keep \$87(2)(6) still
until PO Ortiz had \$87(2)(b) under control or Lt. Rodriguez returned. Hearing \$87(2)(b)
yell, \$87(2)(6) lifted his head and quickly turned his body back to see what was going on. PO
DeJesus reacted and attempted to quickly handcuff him. His handcuffs were in his left hand. As
he was switching his handcuffs from his left hand to his right hand, his dominate hand, the handcuffs spontaneously opened and swung out as \$87(2)(b) lifted his head back, striking \$100.0000000000000000000000000000000000
in his head, causing the injury. Lt. Rodriguez and PO Ortiz stated that they did not witness
the apprehension of \$87(2)(b) (encl. D11-12).
Patrol Guide Procedure 212-08 states that only the amount of force necessary should be
used to effect an arrest (encl. A35-36).
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Team:		
Investigator:Signature	Print	
Supervisor:	Print	
Reviewer:Title/Signature	Print	 Date
Reviewer:Title/Signature	Print	 Date